



# MAYOR AND COUNCIL AGENDA

NO. 8A

DEPT.: Public Works / Contract Management  
STAFF CONTACT: Mike Wilhelm

DATE: February 7, 2005

## SUBJECT:

Approval of the award of Bid #29-05 to D&F Construction of Forestville, Maryland in the amount of \$181,520 for construction, repair, and maintenance of various types of brick roads and sidewalks for a base contract period of March 1, 2005 through December 30, 2005, options to extend the contract for two additional one-year periods, pending appropriation of future funding.

## RECOMMENDATION:

Move approval of the award of Bid #29-05.

**IMPACT:** ☐ Environmental ☒ Fiscal ☒ Neighborhood ☐ Other:  
Neighborhood impacts are generally limited to temporary parking and traffic restrictions.

**Fiscal Impact:** ☒ Within budget ☐ Over budget:

Funding will be provided through a variety of sources, including the General Fund, the Concrete Maintenance CIP (Project 7F11), and others, as appropriate, based on the specific location and type of work.

**Fund:** ☒ General ☒ Capital Projects ☐ Parking ☐ Water ☐ Sewer ☐ Refuse  
☐ SWM ☐ Debt Service ☐ Other:

**DISCUSSION/HISTORY/BACKGROUND:**

Staff prepared and publicly advertised Bid #29-05 in November 2004 as a requirements contract for the construction, repair, and maintenance of various types of brick roadways and sidewalks throughout the City. Forty-eight bid documents were distributed, including three Rockville firms. Six bids were received.

<u>Company</u>	<u>Base Period</u>	<u>Option 1</u>	<u>Option 2</u>	<u>Total</u>
D&F Construction Forestville, MD	\$181,520.00	\$188,929.00	\$196,388.00	\$566,837.00
Romano Concrete Silver Spring, MD	\$209,984.00	\$220,982.20	\$230,982.40	\$661,449.60
Ft. Myers Construction Washington, D.C.	\$236,132.00	\$250,158.60	\$264,235.20	\$750,525.80
C&F Construction Washington, D.C.	\$247,330.00	\$259,696.50	\$272,681.34	\$779,707.84
Civil Construction, LLC Cheverly, MD	\$317,654.00	\$317,654.00	\$317,654.00	\$952,962.00
OMF Construction Beltsville, MD	\$337,544.00	\$337,544.00	\$337,544.00	\$1,012,632.00

The engineer's estimate for the base period was \$225,000.

**Notes on the bid:**

This is a one-year contract, options to extend the contract for two additional one-year periods, running with the calendar year. Quantities used in the preparation of the bid are based on a three-year average of actual work completed and/or estimates of anticipated work.

**Project Description:**

This is an annual program through which the City replaces or repairs damaged brick roadways and sidewalks and constructs new brick sidewalks and roads as necessary. Work is generated through citizen requests as well as staff recommendations and evaluations of conditions.

**References:**

Staff reviewed all references submitted and has a history of successful projects with the bidder.

**Options Considered (*pros and cons*):**

Not applicable.

**Boards and Commissions Review:**

Not applicable.

**Change in Law or Policy:**

Not applicable

**Next Steps:**

After approval, the Purchasing Division will issue a contract to D&F Construction.

**PREPARED BY:** Michael Wilhelm 1/25/2005

Michael Wilhelm, P.E., Chief, Contract Management

Date

**CONCUR:**

Eileen Morris

Eileen Morris, Contracts Officer

1/26/2005

Date

**APPROVE:**

Eugene H. Cranor

Eugene H. Cranor, Director of Public Works

Date

**APPROVE:**

Scott Ullery

Scott Ullery, City Manager

1/26/05

Date

**LIST OF ATTACHMENTS:**

None



# MAYOR AND COUNCIL AGENDA

NO. 83

DEPT.: Public Works / Contract Management

DATE: February 7, 2005

STAFF CONTACT: Mike Wilhelm

## SUBJECT:

Approval of the award of Bid #30-05 to the three lowest responsive and responsible bidders: Romano Concrete Construction of Upper Marlboro, Maryland; D&F Construction Inc of Forestville, Maryland; and Cylos Inc. of Beltsville, Maryland in an aggregate amount not to exceed \$1 million for the FY 2006 Concrete Maintenance Program.

## RECOMMENDATION:

Move approval of the award of Bid #30-05.

**IMPACT:** ☐ Environmental ☒ Fiscal ☒ Neighborhood ☐ Other:

Neighborhood impacts are generally limited to temporary parking and traffic restrictions.

**Fiscal Impact:** ☒ Within budget ☐ Over budget:

Funding will be provided through a variety of sources, including: the Concrete Maintenance CIP (Project 7F11), the Bridge Rehabilitation CIP (Project 8L11), the Driveway Apron Program CIP (Project 5B12), the Pedestrian Safety CIP (Project 4B71), the West End Sidewalks CIP (new proposed FY 2006 CIP), and other accounts, as appropriate, based on the specific location of work.

**Fund:** ☐ General ☒ Capital Projects ☐ Parking ☐ Water ☐ Sewer ☐ Refuse  
☐ SWM ☐ Debt Service ☐ Other:

## DISCUSSION/HISTORY/BACKGROUND:

Staff prepared and publicly advertised Bid #30-05 in November 2004 for concrete maintenance program services. Thirty-six bid documents were distributed, including two Rockville firms. Ten bids were received.

<u>Company</u>	<u>Of</u>	<u>Amount Based on</u> <u>Est. Quantities *</u>
Romano Concrete	Silver Spring, MD	\$454,320.00
D&F Construction Inc	Forestville, MD	\$479,752.50
Cylos Inc	Beltsville, MD	\$484,210.00
NZI Construction Corp	Beltsville, MD	\$496,140.00
M Luis Construction	Clinton, MD	\$502,420.00
C&F Construction	Washington, D.C.	\$517,430.00
Concrete General Inc	Gaithersburg, MD	\$670,570.00
Civil Construction LLC	Cheverly, MD	\$693,200.00
Ft. Myers Construction	Washington, D.C.	\$893,520.00
J&P Excavating Co, Inc	Adamstown, MD	\$1,047,400.00

### Notes on the bid:

\* The bid amounts shown are based on estimated quantities. These estimates were developed using a three-year average of actual quantities used as well as anticipated work. The total bid amounts above are for bid evaluation purposes only and do not reflect an obligation by the City for specific amounts to specific bidders. Total payments to the three lowest priced bidders shall not exceed \$1 million. The purpose of awarding this bid to multiple bidders is to assure an adequate pool of manpower and resources and to minimize delays in responding to work requests.

### Project Description:

This is an annual program through which the City replaces damaged and/or aging concrete curbs, sidewalks, and driveway aprons; installs new aprons, sidewalks, and curbs; and accomplishes other small projects as needed, including correcting drainage problems, improving street geometry, providing for pedestrian safety, ADA compliance, storm drain and bridge repairs. Work is generated through citizen requests, coordination with the asphalt program, and evaluation of conditions by staff.

### References:

Staff reviewed all references and found all to be acceptable. Staff also has a successful history with all three companies on previous City projects, either as a primary or sub-contractor.

### Options Considered (*pros and cons*):

Staff continuously looks at all options of maintaining concrete sidewalks, curbs, aprons, etc. and the financial impact on the current budget, including doing no maintenance. New products and techniques are evaluated as necessary. Recent inclusion of the alternative of grinding trip hazards is one example of the use of new techniques.

**Boards and Commissions Review:**

Not applicable.

**Change in Law or Policy:**

Not applicable

**Next Steps:**

After approval, the Purchasing Division will issue contracts to the three lowest responsible bidders.

**PREPARED BY:** Michael Wilhelm 1/21/2005

Michael Wilhelm, P.E., Chief, Contract Management

Date

**CONCUR:**

Eileen Morris  
Eileen Morris, Contracts Officer

1/25/05  
Date

**APPROVE:**

Eugene H. Cranor  
Eugene H. Cranor, Director of Public Works

1/25/05  
Date

**APPROVE:**

Scott Ullery  
Scott Ullery, City Manager

1/28/05  
Date

**LIST OF ATTACHMENTS:**

None



# MAYOR AND COUNCIL AGENDA

NO. 8C

DEPT.: Recreation and Parks / Police  
STAFF CONTACT: Mike Critzer/Terry Treschuk

DATE: February 7, 2005

**SUBJECT:** Approval of Joint Procurement Agreement on Montgomery County Government Contract 5506040009 to EAI Security Systems, Incorporated of Rockville, Maryland in the amount of \$330,000 for security and surveillance systems installation, and maintenance service/repairs.

This is a joint procurement contract, as per Montgomery County Government Contract 5506040009, in an amount not to exceed \$330,000 for the initial term through December 2005 (base year) with the option to extend the contract for two additional one-year terms, not to exceed \$330,000 each term, contingent on contract renewal by Montgomery County and subject to approval of funds.

## RECOMMENDATION:

Staff recommends approval of a requirements contract with EAI Security Systems, Incorporated of Rockville, Maryland for fixed unit pricing for time and materials for security and surveillance installation, and maintenance service/repairs.

**IMPACT:** ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

**Fiscal Impact:** ☒ Within budget ☐ Over budget:

Budget Estimate: \$330,000

**Fund:** ☒ General ☒ Capital Projects ☐ Parking ☐ Water ☐ Sewer ☐ Refuse  
☐ SWM ☐ Debt Service ☐ Other:

Capital Projects Fund: \$250,000 of this contract award will support the installation of new security access systems for City Hall, the Civic Center Complex and the Public Works Contract Management Office.

General Fund: \$80,000 of this contract award will support routine and emergency maintenance service/repairs to existing security, surveillance and security access systems at City facilities.

Sufficient funds are budgeted in the Police Technology Capital Improvements Program Account 420-750-1C01 for new installations and the Recreation and Parks Department Accounts 420-900-4A61-0426, 110-900-8511-0231, and 110-900-7531-0231 for maintenance service/repairs.

FUNDING NOTE: Federal grant monies are available to offset the \$250,000 cost in the Capital

Projects Fund for the new security access systems, from the U.S. Department of Justice, Office of Justice Programs Federal Grant 2003CKWX0043. The total grant amount awarded to the City is \$1,490,250. These monies have been provided to the City to fund radio systems upgrades, reverse 911 emergency community notification systems, digital finger printing systems, records management systems and facility security access systems.

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## **DISCUSSION/HISTORY/BACKGROUND:**

**Project Description:** This contract will provide for the installation of new security access systems, and routine and emergency maintenance service/repairs to existing security, surveillance and security access systems at City facilities. All services will be consistent with the specification requirements and pricing in Montgomery County Government Contract 5506040009. The initial contract term will be January 2005 through December 2005.

Installations will include the expansion of the security access system currently in use on the main entrance at City Hall. All entrance doors and selected high security interior doors at City Hall, the Civic Center Complex and the Public Works Contract Management Office will be retrofitted to operate on the security access card system. Additionally, all necessary control wiring and software for the future installation of automated security gates on the parking lots at City Hall will be included in the access control system network. Security access hardware will include systems mainframe, server(s), dedicated PC work station(s), swipe card encoder(s), swipe cards, electronic door locks and network wiring. (See attached memorandum.)

The annual requirements contract for maintenance service/repairs of security and surveillance systems will include routine and emergency repairs of existing interior and exterior systems, as requested. The cost for services will range from \$18 per hour for a Cable Puller, \$32.00 per hour for a Junior Technician, \$46.00 per hour for a Lead Technician and \$65.00 per hour for a Supervisor.

**Funding for Security Access Installation:** This installation project is included in the Police Technology Capital Improvements Program Account 420-750-1C02, which first appeared as a Capital Project in Fiscal Year 2001. Federal monies are available for this project from the U.S. Department of Justice, Office of Justice Programs Federal Grant 2003CKWX0043 in the amount of \$1,490,250. These monies have been provided to the City to fund radio systems upgrades, reverse 911 emergency community notification systems, digital finger printing systems, records management systems and facility security access systems. Total expenditures for the installation of security access systems in the initial term shall not exceed \$250,000.

**Funding for Maintenance Service/Repairs:** Maintenance expenditures over the next year for the work to be completed this fiscal year, as described above, should be minimal, as the work will be covered by warranties. Repairs and maintenance to existing security systems and equipment will be carried out under this contract. Funding for this maintenance service/repairs is available in various Recreation and Parks accounts. Total expenditures for maintenance service/repairs of security surveillance systems in the initial term shall not exceed \$80,000.

**References:** EAI Security Systems, Incorporated is currently providing high quality security and fire alarm services to the City and Montgomery County.

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**Options Considered (*pros and cons*):** Not applicable.

**Boards and Commissions Review:** Not applicable.

**Change in Law or Policy:** Not applicable.

**Next Steps:** After the Purchasing Division issues a contract to EAI Security Systems, Incorporated, staff contacts will meet with EAI Security Systems, Incorporated to initiate design and installation of the new systems. Maintenance service/repairs to existing systems will be ongoing.

**PREPARED BY:**

Steve Mader  
Steve Mader, Superintendent of Parks and Facilities

**APPROVE:**

Burt Hall  
Burt Hall, Director of Recreation and Parks

1.28.05  
Date

Terry Treschuk  
Terry Treschuk, Chief of Police

1.28.05  
Date

Eileen Morris  
Eileen Morris, Contract Officer

1-28-05  
Date

Scott Ullery  
Scott Ullery, City Manager

1/28/05  
Date

**LIST OF ATTACHMENTS:**

Memorandum from T.N. Treschuk, Chief of Police: Security Access System Background Information



City of Rockville

## **M E M O R A N D U M**

January 18, 2005

TO: Scott Ullery, City Manager

FROM: T. N. Treschuk, Chief of Police

SUBJECT: Security Access System: Background Information

As part of the United States Department of Justice Programs Federal Grant 2003CKWX0043, the City of Rockville proposed a project of installing a security access system for City Hall and the Civic Center complex. Grant monies were approved for this project in the amount of \$250,000.00.

The proposed security access system is a controlled access card system, which is basically an expansion of the system currently in use on the main entrance to City Hall. All entrance doors and selected high security interior doors at City Hall and the Civic Center complex will be retrofitted to operate on a security card system.

The security cards will be issued to designated city staff who have a need for same. The cards will also be used in lieu of lending out keys to citizens and business groups who rent all or part of the Civic Center complex. The Civic Center staff will be supplied with a software program which allows them to activate cards as they rent out the facility. The cards can be programmed to only open specific doors, and also can be programmed to be deactivated within a specific time frame. The system also allows for the identity of the cardholder to be recorded each time the security card is used. This allows for a higher level of security and control of the affected City facilities.

This system is the same used by Montgomery County in controlling all of their government buildings. It is our intent to eventually expand this program over the coming years to all City facilities (recreation centers, outbuildings, etc.). The controlled access card also has the capability to be fully integrated into our current city facility security alarm system over the next few years.

The installation of this system at City Hall is being coordinated to coincide with the current renovation project in place. The directives for installation of the system into the Civic Center complex includes ensuring wiring is not exposed and is appropriately placed so as not to detract from the building architecture.

TNT:mer



# MAYOR AND COUNCIL AGENDA

NO. 80

DEPT.: Community Planning & Development Services /  
STAFF CONTACT: Cas Chasten, Planner III

DATE: Feb. 7, 2005

**SUBJECT:** Introduction of Ordinance: Map Amendment Application MAP2004-00092 confirming Zoning Classification of property approximately 42,886 square feet in size, more or less, located in the northwest quadrant of Gude Drive and Southlawn Lane, owned by Louis H. & H.S. Fanaroff, et al, in the I-1 (Service Industrial) Zone.

**RECOMMENDATION:** Introduce the Ordinance to adopt the local map amendment application.

**IMPACT:** ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other: The proposed map amendment confirms the existing zoning classification of the property as I-1 (Service Industrial).

**Fiscal Impact:** ☐ Within budget ☐ Over budget:

**Fund:** ☐ General ☐ Capital Projects ☐ Parking ☐ Water ☐ Sewer ☐ Refuse  
☐ SWM ☐ Debt Service ☐ Other:

**DISCUSSION/HISTORY/BACKGROUND:** The petitioner/s request that the I-1 (Service Industrial) Zone classification on the subject property be confirmed.

The subject property is a single parcel of land containing 42,886 square feet (.98 acres) that the applicant intends to develop with a gas station. The parcel is located in the northwest quadrant of Gude Drive and Southlawn Lane. The Mayor and Council annexed the property on July 26, 1999, along with the land area within the Gude Drive and Southlawn Lane intersection. The land area within the intersection is approximately 16,434 square feet in size. In conjunction with the annexation, the Mayor and Council, on August 2, 1999, adopted Zoning Ordinance No. 10-99, placing the properties in the City's I-1 Zone and executed an annexation agreement placing certain use restrictions on the property.

In September 1999, the operator (Rylins Enterprises Inc.) of the gasoline filling station located across the street from the subject property, filed a petition with the Circuit Court of Montgomery County seeking judicial review of Zoning Ordinance No. 10-99. The Circuit Court reversed the City of Rockville's adoption of Zoning Ordinance No. 10-99 as constituting improper conditional and spot zoning, and remanded the case to the Mayor and Council. The Circuit Court's decision was

appealed by the Mayor and Council and the owners of the subject property, and ultimately was affirmed by both the Maryland Court of Special Appeals and the Maryland Court of Appeals. The Court of Appeals decision determined that "the subject property as of September 9, 1999 has been annexed into the City of Rockville, but retains the County's I-2 Zoning classification."

On August 4, 2003 the Mayor and Council enacted Zoning Ordinance No. 23-03 adopting Comprehensive Map Amendment Application No. MAP2003-00087 for the entire City. As part of that comprehensive map amendment the subject property was placed in the City's I-1 (Service Industrial) Zone, without any restrictions. Mr. Sunil Kappor, the current owner of the competing gas station (successor to Rylyns) has disputed the effect of the 2003 comprehensive map amendment on the subject property and maintains that said property retains its original County I-2 Zone. Although the City disagrees with Mr. Kappor's contention and maintains that the subject property is effectively zoned I-1, the applicant has filed the subject local map amendment application to eliminate any confusion that may arise regarding the property's zoning classification.

The City is processing this local map amendment application as a supplement to, and not a substitution for, Comprehensive Map Amendment No. MAP2003-00087. In other words, in processing this application the City does not revoke, repeal, or otherwise alter Map Amendment No. MAP2003-00087 and the effect of that map amendment on the subject property. Any final action on this local map amendment application shall become effective only if a court of competent jurisdiction were to find that the comprehensive map amendment did not properly place the subject property in the City's I-1 Zone.

The following analysis becomes relevant only if Map Amendment No. MAP2003-00087 did not effectively place the subject property in the City's I-1 Zone.

The local map amendment application must satisfy the "change or mistake rule." That is, the Mayor and Council must find either that there has been a change in the character of the neighborhood and/or there has been a mistake in the original zoning. This application satisfies both tests.

The "original" City zoning of the property of I-1 was invalidated due to use restrictions contained in the annexation agreement. That mistake in the original I-1 zoning will be corrected by this local map amendment placing the property in the City's I-1 zone without conditions (In addition, recent legislation adopted by the General Assembly now allows the use restrictions that were invalidated by the Court in the Rylyns case).

In addition, to the extent that the subject property may currently remain in the County's I-2 Zone, a significant and overarching change has occurred since the property's original County zoning – the annexation of the property into the City. The City cannot enforce the County zoning and the County lacks land use authority in the City. The property is in legal limbo for purposes of effective, enforceable zoning and planning of the property. This void is reflected in the County's recently adopted *2004 Upper Rock Creek Master Plan* which fails to make recommendations for this site because it is located within the City. The annexation of the subject property compels a change in the property's zoning from a County zone to an appropriate City zone.

Placement of the subject property in the City's I-1 Zone is supported by the City and County's 1999 *Gude Drive - Southlawn Lane Special Study*, which indicated that small parcels such as the subject property may be appropriate for City's I-1 zoning once annexed into the City, and by the County Council's original approval of the City's I-1 zone in connection with the annexation of the property.

There has been a clear pattern of intent by Montgomery County, the City of Rockville, and the applicant to place this property in the City's I-1 zone. The City has attempted to zone this property I-1 as part of the annexation process, and subsequently through a comprehensive map amendment. Unfortunately, due to the complicated and unanticipated series of events surrounding this property it appears the current zoning of the property still remains in question. The approval of this local map amendment application will confirm the I-1 zoning of the subject property.

The Mayor and Council were scheduled to hold a public hearing on the request at its December 6, 2004 meeting. At that meeting, the Mayor and Council voted to defer the public hearing on this matter to its January 10, 2005 meeting. At the January 10, 2005 meeting, the Mayor and Council voted to hold the public record open on this matter for two weeks until January 24, 2005. At the public hearing the applicant indicated that they have reached an agreement with Mr. Kappor and that he has dropped his opposition.

**Boards and Commissions Review:** The Planning Commission considered the application at its meeting on December 1, 2004. Based on the information provided, the Commission voted unanimously to recommend to the Mayor and Council the request be approved as submitted.

**Next Steps:** Adopt Ordinance at future meeting.

**PREPARED BY:**

*Castor D. Chasten*

Castor D. Chasten, Planner III

**APPROVE:**

*Scott E. Parker*

for Scott Parker, AICP, Acting Chief of Planning

*1/28/05*  
Date

*Arthur D. Chambers*

Arthur D. Chambers, AICP, Director, CPDS

*1/28/05*  
Date

*Scott Ullery*

Scott Ullery, City Manager

*1/30/05*  
Date

**LIST OF ATTACHMENTS:**

1. Staff Report dated November 22, 2004
2. Chronology of Events dated October 5, 2004
3. Ordinance to grant map amendment.

CITY OF ROCKVILLE PLANNING DIVISION  
STAFF REPORT

November 22, 2004

**SUBJECT:**

Map Amendment Application MAP2004-00092

Applicant: Miller, Miller & Canby, c/o Jody S. Kline, Esquire  
200B Monroe Street, Rockville, Maryland 20850

For: Louis H. & H.S. Fanaroff, et al  
5809 Nicholson Lane, Apt. 1009  
Rockville, Maryland 20852

Property  
Location: Northwest Quadrant of Gude Drive & Southlawn Lane

Planning Commission Review Date: December 1, 2004  
Board of Appeals Public Hearing Date: December 6, 2004

**PREVIOUS RELATED ACTION:**

Annexation Petition ANX99-0124, Louis Fanaroff and Stanford & Elaine Steppa c/o Magraders Holdings, Inc., a request to annex the property located in the northwest quadrant of Gude Drive and Southlawn Lane and the land area within the intersection of Gude Drive and Southlawn Lane, into the City of Rockville from Montgomery County, and upon annexation assign the I-1 (Service Industrial) zoning classification to the property/s. Annexation Resolution No. 13-99 was adopted by the Mayor and Council on July 26, 1999.

Special Exception Application SPX99-0279, Shannon Allcock, a request to develop the property located in the northwest quadrant of Gude Drive and Southlawn Lane for the operation of a Class I automobile filling station, within the proposed I-1 (Service Industrial) Zone. Approved by the Board of Appeals on October 2, 1999.

**REQUEST:**

The applicant seeks zoning reclassification through a local map amendment of the 42,886 square foot property located in the northwest quadrant of Gude Drive and Southlawn Lane, from Montgomery County's I-2 (Heavy Industrial) Zone to the City of Rockville's I-1 (Service Industrial) Zone. The applicant (property owners) requests that the Mayor and Council affirm the zoning of the subject property to the City's I-1 Zone as intended when the property was annexed into the City of Rockville from Montgomery County, by the Mayor and Council on July 26, 1999.

## **STAFF RECOMMENDATION:**

Approval of reclassification of the property from Montgomery County I-2 (Heavy Industrial) Zone to the City's I-1 (Service Industrial) Zone.

## **ANALYSIS:**

### **Property Description**

The subject property has frontage on two (2) public streets, Gude Drive and Southlawn Lane. The property is undeveloped, triangular in shape, and is approximately 42,886 square feet in size. The property is located within the corporate limits of the City. When the property was annexed by the Mayor and Council on July 26, 1999, the land area within the Gude Drive and Southlawn Lane intersection, public right-of-way (r/w) owned by the County, was also annexed along with the subject site (Ref. ANX97-0124). The land area within the Gude Drive and Southlawn Lane intersection is approximately 16,434 square feet in size. On August 2, 1999 the Mayor and Council adopted Ordinance No. 10-99, placing the properties in the City's I-1 (Service Industrial) Zone.

The subject site is bound on the north by a mixture of heavy industrial land uses, east-northeast by a mixture of heavy industrial and convenience retail uses, and south and west by light industrial and commercial land uses. The subject property and abutting properties to the west, north and east are located in the County and zoned I-2 (Heavy Industrial). Properties south and southeast are located in the City and zoned I-1 (Service Industrial).

The property is bound to the north and east by a waste paper recycling facility, several concrete-construction materials processing plants, a moving and storage company, warehousing operations, and a strip retail center containing convenience retail, businesses. Neighboring land uses to the south and west include an automobile filling station, a service industrial and warehousing complex, and a few convenience retail uses.

The property has approximately 402 feet of street frontage along Gude Drive and 200 feet of frontage on Southlawn Lane. These two roadways are heavily traveled. The property is relatively flat with some gentle sloping, gradually falling away from the site's street frontages. Presently, there are only a few modest size trees in evidence on the site. There is however, a linear stand of trees varying in size and species, located along the site's Southlawn Lane street frontage. The remaining vegetation on the site is sparse and is primarily scrub undergrowth.

## **DISCUSSION:**

Based on information provided by the applicant's counsel, during the month of September 1999, the operator (Rylins Enterprises Inc.) of the gasoline filling station located across the street from

the subject property on Gude Drive, filed a petition with the Circuit Court of Montgomery County seeking judicial review of Ordinance No. 10-99. According to the attached "chronology of events" submitted by the property owner/s counsel, on or about March 17, 2000, the Circuit Court reversed the City of Rockville's adoption of Ordinance No 10-99, holding that the manner in which the property was rezoned constituted improper conditional and spot zoning, and remanded the case to the Mayor and Council.

The Mayor and Council along with the owners of the property filed an appeal with the Maryland Court of Special Appeals. It is noted that on December 31, 2001, the judgment of the lower courts was affirmed by the Court of Appeals. The result of the Court of Appeals decision determined that "the subject property as of September 9, 1999 has been annexed into the City of Rockville, but retains the County's I-2 (Heavy Industrial) Zone."

In order to officially implement the City's I-1 Zoning classification, as was intended when the subject properties were annexed, the property owners in consultation with the Mayor and Council, file the subject "local map amendment" for Mayor and Council consideration and action.

Staff notes that the I-1 Zoning classification is consistent with the City's Master Plan adopted on November 12, 2002, which designates the subject site for service industrial land usage. The I-1 Zone is also in accordance with the Mayor and Council previous adoption of Ordinance No. 10-99, placing the property in the City's I-1 Zone (Ref. ANX97-0124)

#### **NOTIFICATION:**

Notification is required for the public hearing of a local map amendment in the form of letters sent to property owners that own property immediately adjacent to the subject property.

#### **RECOMMENDATION:**

Staff recommends approval of the application as submitted, based on all of the factors noted above.

/cdc

Attachments

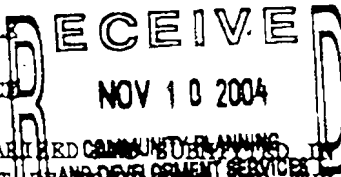
Attachment "A" -- Map Amendment Application

Attachment "B" -- Site Identification Plat

Attachment "C" -- Chronology of Events



APPLICATION TO THE CITY OF ROCKVILLE  
FOR A MAP AMENDMENT  
TO THE ZONING AND PLANNING ORDINANCE



THIS APPLICATION MUST BE TYPEWRITTEN OR PRINTED AND NOTARIALIZED IN  
DUPLICATE TO THE CITY CLERK FOR FILING. ALL ITEMS MUST BE COMPLETED AND THE  
REQUIRED DOCUMENTS AND FILING FEE MUST ACCOMPANY THIS APPLICATION.

Miller, Maller & Canby, Attorneys for  
Louis H. and H. S. Fanaroff, et al

DO NOT WRITE IN THIS SPACE

Application No. MAP2004-00092

Name of Applicant  
200B Monroe Street  
Rockville, MD 20850

Filing Date 11/10/04

Filing Fee waived

Address

Public Hearing Date 12/6/04

301-762-5212

Decision/Date

Telephone Number

Louis H. and H. S. Fanaroff, et al

Jody S. Kline

Owner (if other than Applicant)  
5809 Nicholson Lane, Apt. 1009  
Rockville, MD 20852

Attorney for Applicant  
Miller, Miller & Canby  
200B Monroe Street  
Rockville, MD 20850

Address

Address

N/A

301-762-5212

Telephone Number

Telephone Number

APPLICATION IS HEREBY MADE WITH THE ROCKVILLE MAYOR AND COUNCIL FOR APPROVAL OF  
THE RECLASSIFICATION OF PROPERTY LOCATED IN ROCKVILLE, MARYLAND, AND KNOWN AS:

Parcel 025, Tax Map FR43

~~XXX~~ -- Block -- Subdivision -- if  
boundaries conform to lot boundaries within a subdivision for which a plat is  
recorded among the Land Records of Montgomery County. If not, attach a  
description by metes and bounds, courses and distances and plat reference.

Also furnish the following information from the tax bill for the land(s) to be  
zoned:

DISTRICT	SUBDIVISION	NAME CODE*	LOT	BLOCK	ACRE/FT.	SUBDIVISION OR TRACT NAME
04	201	02051374			42,688 SF	Burgundy Park

\*The account number as recorded on the tax docket (Mont. Co.) Assessment Office.

ATTACHMENT "A"

Location of Property: Northwest quadrant of intersection  
Southlawn Lane and East Gude Drive  
(Street name and number, or, if none, the location with  
respect to nearest public roads)

Size: 42,688.00 SF  
(Square feet if less than one acre, or acres if one acre or more)

From the I-1 (City) Zone to the I-1 (City) Zone  
(Present classification) (Requested classification)

or the \_\_\_\_\_ Zone.  
(Alternate requested classification)

Listed below are the application numbers and dates of filing of, and actions taken on, all prior applications filed within three (3) years prior to this date for the reclassification of the whole or any part of the land above described:

<u>APPLICATION NUMBER</u>	<u>DATE</u>	<u>ACTION TAKEN</u>
<u>N/A</u>	<u>                    </u>	<u>                    </u>
<u>                    </u>	<u>                    </u>	<u>                    </u>
<u>                    </u>	<u>                    </u>	<u>                    </u>

THE FOLLOWING DOCUMENTS ARE FURNISHED AS PART OF MY APPLICATION:

1. A concise statement of the facts and circumstances upon which the Applicant relies to justify the reason(s) for this reclassification [change in character of the neighborhood, mistake in the original zoning, other reasons].
2. An identification plat prepared by a civil engineer or surveyor certified by him to be correct, showing by metes and bounds, courses and distances the land proposed to be reclassified, or if the boundaries conform to lot boundaries within a subdivision for which a plat is recorded in the Land Records of Montgomery County, then a copy of such plat, the land proposed to be reclassified appearing in a color distinctive from that of other land shown on the plat.
3. A vicinity map shall be furnished by the petitioner covering the area within 1,000 feet of the boundaries of the land covered by this application showing the existing zoning classification of such land as it appears on the official zoning map in the office of the Mayor and Council.

The scale of the identification plat and vicinity map shall be noted thereon and shall be not less than 100 feet to the inch if the land proposed to be reclassified is of an area of ten acres or less and not less than 200 feet to the inch if of an area of more than ten (10) acres. A north direction arrow shall appear on such plat and map

By: 

(Signature of Applicant)

Subscribed and sworn before me this 10<sup>th</sup> day of November, 19 2004

My Commission Expires: 3/1/07

  
Notary Public

In the Matter of the Application of  
Miller, Miller & Canby  
for Rezoning

Application No. \_\_\_\_\_

STATEMENT IN SUPPORT OF APPLICATION FOR REZONING

This application is intended to confirm I-1 (Light Industrial) zoning for the subject 0.9845 acre parcel located at the intersection of Gude Drive and Southlawn Lane. The unusual zoning history of this property is an integral part of the justification for this requested rezoning.

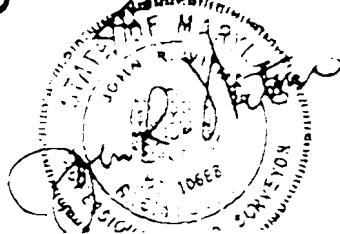
In July, 1999, the Mayor and City Council annexed the subject property (ANX 97-0124) and simultaneously placed Rockville's I-1 zoning on the land. Subsequently, a series of court decisions culminated in a ruling by the Court of Appeals of Maryland that ratified the City's annexation action, but ruled invalid the I-1 zoning concurrently placed on the property. The result of the December 31, 2002 Court of Appeals decision had the bizarre effect of leaving the subject property within the boundaries of the City of Rockville but retaining Montgomery County's I-2 zoning.

In 2003, the City adopted a new Town Master Plan which recommended I-1 zoning for the subject property. Subsequently, the City Council approved a sectional map amendment that rezoned the subject property from, essentially, an unzoned condition to I-1, the same zone originally contemplated for the subject property.

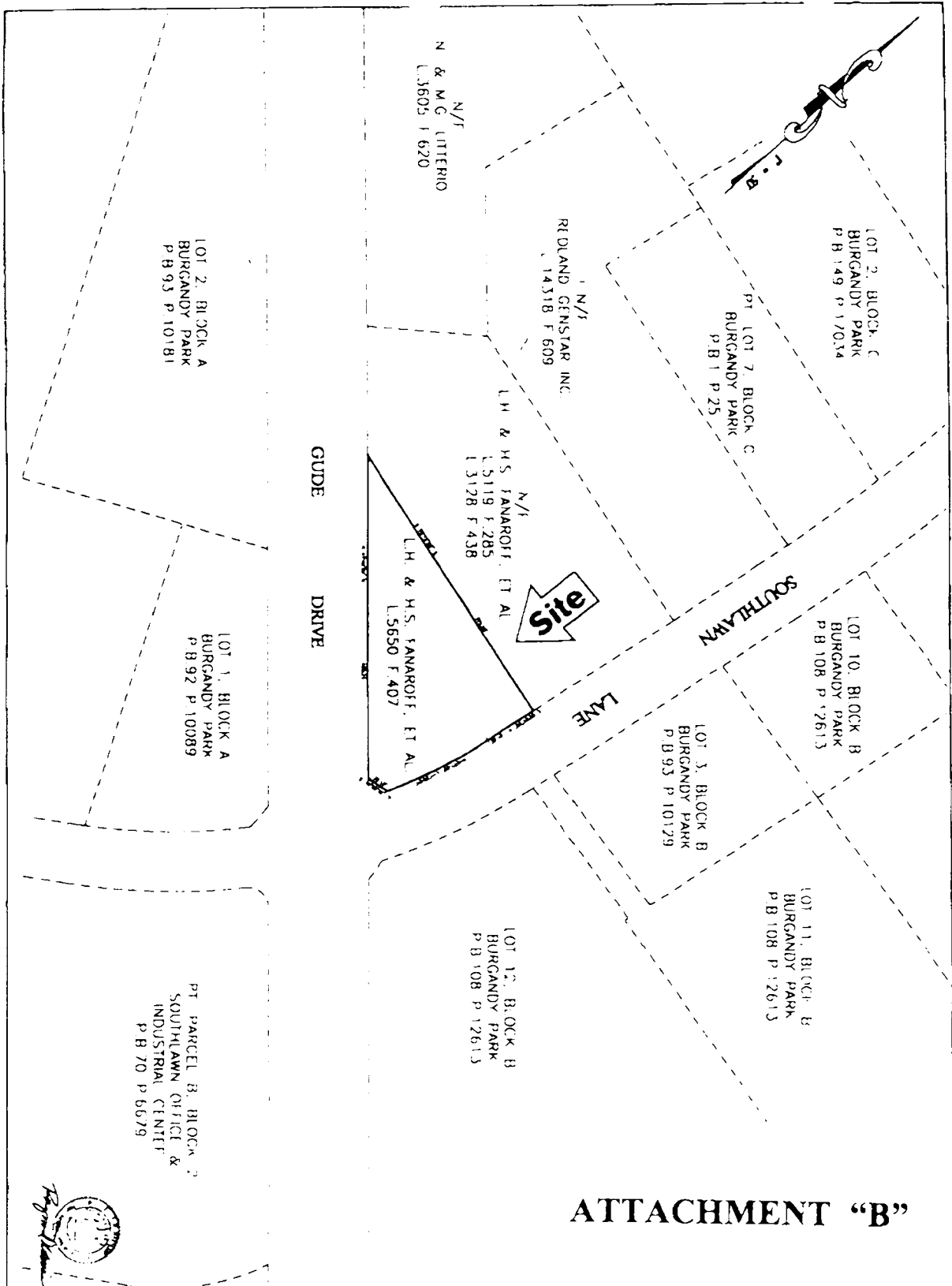
Prior to development commencing on the subject property, a legal question was raised about the validity of the 2003 comprehensive rezoning. In order to avoid any potential of prolonged litigation over the legitimacy of the City Council's 2003 rezoning, this application will confirm the City's I-1 zoning that already exists on the property.

~ FOURTH ELECTION DISTRICT ~  
MONTGOMERY COUNTY, MARYLAND

SCALE: 1" = 100'      AUGUST, 1997



**W WITMER ASSOCIATES, LLC**  
 Land Surveying, Land Planning & Design  
 154-A Hampstead Drive, Rockville, MD 20850  
 Tel: (301) 309-4600 Fax: (301) 309-8800



## ATTACHMENT "B"

NO.	DATE	REVISION

ROCKVILLE CHEVRON  
PARCEL 25  
LITER 5650 FOLD 407  
AS ANNEXED INTO THE  
CITY OF ROCKVILLE

IDENTIFICATION PLAT

**MADDOX**  
INCORPORATED  
ENGINEERS & SURVEYORS  
FOR THE STATE OF  
MONTGOMERY COUNTY, MARYLAND  
JULY 1988

ATTACHMENT B

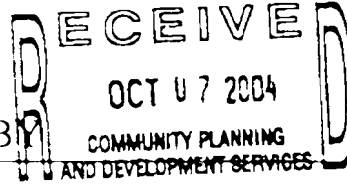
LAW OFFICES

MILLER, MILLER & CANBY

CHARTERED

270-B MONROE STREET  
ROCKVILLE, MARYLAND 20850

(301) 752-5317  
FAX (301) 752-6044



JAMES R. MILLER JR.  
PATRICK C. MCKEEVER  
JAMES L. THOMPSON  
LEWIS R. SCHUMANN  
JODY S. KLINE  
ELLEN S. WALKER  
MAURY S. EPNER  
JOSEPH P. SUNTUM  
SUSAN W. CARTER  
ROBERT E. GOUGH  
DONNA E. McBRIDE  
MICHAEL G. CAMPBELL  
SOO LEE-CHO  
W. CHRISTOPHER ANDREWS  
*\*Off Counsel\**

October 5, 2004

Mr. Cas Chasten  
Rockville City Hall  
111 Maryland Avenue  
Rockville, MD 20850

RE: Special Exception for Automobile Filling Station;  
Northwest Quadrant of Gude Drive and South

Dear Cas:

As requested, I am pleased to enclose a document entitled "Chronology of Events; City of Rockville, Annexation Petition No. ANX97-0124" which highlights the critical dates and events related to development approvals for the above-referenced property. Please feel free to use the attached material in any way you deem necessary in preparation of your staff report.

Sincerely yours,

MILLER, MILLER & CANBY

Jody S. Kline

JSK/dlt

Attachment

ATTACHMENT "C"

cc: Mr. Bob Spalding  
Mr. Ray Norris  
Mr. Stephen Petersen

J:\A\A doc\115757-01 doc\Chasten for 10-4-04.doc  
October 4, 2004 2:41 PM

CHRONOLOGY OF EVENTS  
CITY OF ROCKVILLE, ANNEXATION PETITION NO. ANX97-0124

Subject Property - Situated in the Northwest Quadrant of Intersection at Gude Drive and Southlawn Lane

- May 14, 1997: Property owners file Petition for Annexation with the City of Rockville.
  - The Petition requested that, upon annexation, the property be rezoned from the County's I-2 (Heavy Industrial) zone to the City's I-1 (Service Industrial) zone, consistent with the zoning of adjacent properties located within the City's boundaries.
  - The City's 1993 Master Plan recommended that the property (should it be annexed) be placed in the City's I-1 zone.
  - The owners indicate an intention and desire to erect and operate a gasoline service station with ancillary uses on the subject property, a use allowed under the City's I-1 zone with the grant of a special exception.
- January 8, 1998: M-NCPPC Staff recommendation states that the "proposed I-1 (Service Industrial) zoning classification is generally consistent with the Upper Rock Creek Master Plan recommendation of I-2 (Heavy Industrial) Zone recommendation..." and that "[t]he proposed use for a gas station is consistent with the County's I-2 Zone, which allows a gas station by special exception."
- January 15, 1998: Montgomery County Planning Board considers the proposed annexation/rezoning of the subject property, but disagrees with Staff's recommendation and expresses concern "about the loss of I-2 zoned land through annexation and rezoning to allow additional non-industrial uses (i.e., automobile filling station) in the area." The Planning Board's comments on the annexation petition were, in part, as follows:
  - "Industrial uses in the City's proposed I-1 (Service Industrial) zoning classification are not consistent with the Upper Rock Creek Master Plan recommendation of the I-2 Zone (Heavy Industrial). The applicant suggests possible use of the site for a gas station, restaurant or other retail use. The County's I-2 Zone allows a gas station by special exception. However retail uses and restaurants are not allowed."
  - "The County Council needs to review this petition because there are significant differences in the zones and future land uses in the area may require improvements to the intersection of Southlawn Lane and Gude Drive."



NOTE BENE: Section 19, Article 23, of the Annotated Code of Maryland provides that for 5 years after annexation a municipality cannot bestow on a property a zoning classification that will allow a land use different than permitted in the zone recommended in the County's Master Plan unless the County Council approves and consents to such zoning.

- June 18, 1998: Planning Board clarifies its position in a letter to the City of Rockville that the proposed use of the subject property for a gasoline station was not an appropriate use for the property, as it was no longer allowed under the County's I-2 zone.
- The Board again expressed concern "about piecemeal loss of land zoned for heavy industrial uses through the annexation process" as well as the "impact the proposed annexation will have on potential future improvements to the intersection of Southlawn Lane and Gude Drive, should development in the area make such improvements necessary."
- July 13, 1998: County Council's Planning, Housing and Economic Development Committee recommends, by a vote of 3-0, that the full County Council disapprove the request to rezone the subject property based on the Planning Board's reasoning as follows:
  - "[T]he use of the Fanaroff site for a gasoline service station is no longer considered appropriate, since the gasoline service station is no longer a use permitted by right or special exception in the I-2 zone..."
  - "[T]he uses allowed in the County's I-2 zone are the most appropriate uses for the site..."
  - "[T]he properties in the Southlawn area take on an increased importance to the overall inventory of I-2 land because the properties are of varying sizes and in various ownerships, making them available for the full array of permitted and special exception uses allowed in the I-2 zone."
- July 28, 1998: County Council adopts Resolution No. 13-1384 disapproving the request of the owners and the City of Rockville to rezone the property to the City's I-1 zone.
- October 1998 - February 1999: Subsequent to the County Council's adoption of a resolution of denial, owners' representatives present further information to the County Council, resulting in the PHED Committee's reconsideration of the annexation petition.
- February 3, 1999: Councilmember Phil Andrew states rationale for supporting a favorable reconsideration in a memorandum to Ralph Wilson, Senior Legislative Analyst.

- "The Council's previous refusal to endorse the Fanaroff annexation petition was based, in part, on concurrence with the Planning Board's concern about the overall negative trend in the Southlawn area's inventory of heavy industrial land. This broad concern is now the subject of a special joint study by the City of Rockville and Planning Board staff."
- "Given the small size of the Fanaroff property (less than one acre), favorable reconsideration of the Fanaroff annexation petition would have no substantive impact on any future Council action that may stem from the results of the Southlawn area special study."
- "Therefore, given the small size of the Fanaroff property and subsequent developments in addressing the broad issue of commercially available heavy industrial land in Montgomery County, I believe that favorable reconsideration of this annexation petition is justified. I am also confident that such reconsideration appropriately addresses the well-being of the nearby Lincoln Park community and that any concern over traffic management issues in the Southlawn area will be properly addressed by the City of Rockville and County Government."
- February 8, 1999: PHED Committee indicates in a memorandum to the County Council that upon reexamination of the owner's petition for annexation and rezoning that it would support the rezoning, 'provided the City restrict the retail use of the site...'
- February 23, 1999: County Council adopts Resolution No. 14-57 approving the City's proposal to rezone the property to the City's I-1 zone on condition that "the City prohibits the retail use of the site, except for a gasoline service station."
- July 20, 1999: Mayor and Council of Rockville enter into a written annexation agreement with the owners regarding the subject property.
  - One of the conditions included in the agreement stated that "[t]he subject property may not be used for retail use, except for a gasoline service station."
- July 26, 1999: Mayor and Council of Rockville adopt Annexation Resolution No. 13-99, enlarging and extending the boundaries of the City of Rockville by annexing the subject property.
  - The Annexation Resolution did not mention anything regarding the proposed use of the site, nor did it include any language relative to the condition that was later found to be objectionable by the Court of Appeals.
- August 2, 1999: Mayor and Council of Rockville adopt Zoning Ordinance No. 10-99, placing the property in the City's I-1 zoning classification.

- Although Zoning Ordinance No. 10-99 did not explicitly provide that the property could not be used for any retail purpose other than a gasoline service station, it stated that "the Mayor and Council of Rockville, having fully considered the matter, has determined to place the annexed property in the City's I-1 zone, under certain conditions to be set forth in an annexation agreement..."
- September 1999: The operator of a gasoline filling station located across from the subject property (Rylins) files a petition with the Circuit Court of Montgomery County seeking judicial review of Zoning Ordinance No. 10-99.
- March 17, 2000: Circuit Court reverses Rockville's adoption of Zoning Ordinance No. 10-99, holding that the manner in which the subject property was rezoned constituted improper conditional and spot zoning, and remanded the case to the Mayor and Council.
- (Date Uncertain): The Mayor and Council and the owners file an appeal with the Court of Special Appeals.
- (Date Uncertain): The decision of the Montgomery County Circuit Court affirmed by the Court of Special Appeals.
- (Date Uncertain): The Mayor and Council and the owners petition the Court of Appeals for a writ of certiorari. Petition is accepted.
- December 31, 2001: Judgment of the lower courts is affirmed by the Court of Appeals.
- Court of Appeals held that Zoning Ordinance No. 10-99 constituted impermissible conditional use zoning because the City endeavored to foreclose, by a limitation pertaining only to the subject property of this case, all of the otherwise permitted commercial retail uses, and impliedly those commercial retail uses, other than a gasoline service station (allowable by special exception), in the I-1 zone.

RESULT OF COURT OF APPEALS' DECISION: The subject property has, as of September 9, 1999, been annexed into the City of Rockville, but retains the County's I-2 zoning classification.

Ordinance No. \_\_\_\_\_

ORDINANCE:

To grant Map Amendment  
Application MAP2004-00092, Louis  
H. and H.S. Fanaroff, Applicants

WHEREAS, Louis H. and H.S. Fanaroff, c/o Miller, Miller and Canby, 200B Monroe Street, Rockville, Maryland 20850, filed Map Amendment Application No. MAP2004-00092, requesting that an unimproved parcel of land totaling 42,688 square feet, more or less, located in the northwest quadrant of Gude Drive and Southlawn Lane (the "Subject Property"), be placed in the I-1, Service Industrial Zone; and

WHEREAS, the Subject Property was annexed into the City in 1999. In conjunction with the annexation, the Subject Property was placed into the City's I-1, Service Industrial, Zone, which zoning was invalidated by the Court of Appeals in 2002 due to the Court's determination that certain conditions placed on the property's use in the Annexation Agreement were improper (The General Assembly has since adopted legislation negating the effect of the Court's decision, permitting the types of conditions imposed by the City in the Annexation Agreement); and

WHEREAS, as a result of the Court of Appeals' 2002 decision in Rylins vs the Mayor and Council of Rockville, the Subject Property, although located within the City's corporate boundaries, retained its prior Montgomery County I-2, Heavy Industrial, zoning; and

WHEREAS, on August 4, 2003 the Mayor and Council enacted Zoning Ordinance No. 23-03 adopting Comprehensive Map Amendment Application No. MAP2003-00087 for the entire City. The Zoning Map, adopted by Ordinance No. 23-03, placed the Subject Property in the City's I-1, Service Industrial Zone; and

WHEREAS, although the City has placed the Subject Property in its I-1 Zone, a question has been raised as to whether Ordinance No. 23-03 effectively zoned the Subject Property; and

WHEREAS, in order to dispel all doubts as to the effective zoning of the Subject Property, Applicants have filed this local Map Amendment Application MAP2004-00092; and

WHEREAS, the Court of Appeals in its Rylyns decision held that it is appropriate to place City zoning on the Subject Property by way of a local map amendment; and

WHEREAS, more than five years have transpired since the Subject Property was annexed into the City; and

WHEREAS, pursuant to Article 66B of the Annotated Code of Maryland, the Mayor and Council gave notice that a hearing on Map Amendment Application MAP2004-00092 would be held by the Mayor and Council in the Council Chamber, 111 Maryland Avenue, Rockville, Maryland, on January 10, 2005, at 7:00 p.m. or as soon thereafter as it may be held, at which parties in interest and citizens would have an opportunity to be heard; and

WHEREAS, on the 10<sup>th</sup> day of January, 2005, the said application came on for hearing at the time and place provided for in said advertisement; and

WHEREAS, the Planning Staff recommended that the zoning application be approved; and

WHEREAS the Planning Commission recommended approval of the zoning application; and

WHEREAS, on January 31, 2005, the Mayor and Council reopened the record on said application so as to accept by reference into the record of these proceedings the entire record of the 1999 annexation and zoning of the Subject Property; and

WHEREAS, pursuant to the requirements of Article 66B, section 4.05 (a) (2) (ii) the Mayor and Council has found and determined, based on all the evidence and information in the record that:

1. The original Montgomery County I-2, Heavy Industrial, Zone left on the Subject Property following the Court of Appeals invalidation of the City's I-1 zoning of the property in 1999, was the result of the then erroneous action imposing certain use restrictions on the property in the Annexation Agreement. The County's I-2 Zoning of the Subject Property is a mistake. Neither Montgomery County nor the Mayor and Council intended that the Subject Property remain in the County's I-2, Heavy Industrial, Zone once it had been annexed into the City. Both Montgomery County and the Mayor and Council have always intended that the Subject Property be placed in the City's I-1, Service Industrial, Zone.

2. The removal of the Subject Property from the jurisdiction of Montgomery County and the placement of the Subject Property within the corporate boundaries of the City is a substantial change in the character of the Subject Property and the neighborhood where the Subject Property is located. The County has no authority to enforce its Zoning Regulations within the City, and without City Zoning on the Subject Property there can be no effective enforceable zoning and planning of the Subject Property. The absence of enforceable zoning and planning for the Subject Property is detrimental to both the Subject Property and the surrounding neighborhood. Since the original County I-2 Zoning of the Subject Property the following changes, in addition to the annexation of the Property into the City, have occurred: (a) The City and Montgomery County's 1999 Gude Drive- Southlawn Lane Special Study indicated that the City's I-1 Zoning may be appropriate for small parcels such as the Subject Property, once annexed into the City; (b) Montgomery County consented to the placement of the Subject Property into the City's I-1 Zone when annexed into the City; (c) Montgomery County's 2004 Upper Rock Creek Master Plan makes no recommendations for the Subject Property because it is located within the City;

and (d) Effective October 1, 2004, the General Assembly amended Article 66B of the Annotated Code of Maryland to allow municipal corporations to include limitations on the uses of land in an Annexation Agreement; and

WHEREAS, pursuant to the requirements of Article 66B, Section 4.05 (a) (2) (i) of the Annotated Code of Maryland, the Mayor and Council finds, based on all the evidence and information in the record, as follows:

- 1) Population Change – No population change is expected. There are currently no residents on the property and any future development of the property will not result in any change. Therefore, there is no projected student generation that would overburden schools in the area given the current and future utilization rates included in the Montgomery County Public School Capital Improvements Program.
- 2) Availability of Public Facilities - The subject property is not within the City of Rockville's water and sewer service area, but is located within the Washington Suburban Sanitary Commission's (WSSC) service area. Hence, water and sewer services to the subject site would be provided by WSSC when the property is developed. Any public improvements necessitated by future development of the property would be the responsibility of the developer.
- 3) Present and Future Transportation Patterns – The property has frontage on two heavily traveled roadways, approximately 402 feet of street frontage along Gude Drive and 200 feet of frontage on Southlawn Lane. Development of the property may result in the need for a number of street improvements to mitigate traffic

impacts on the surrounding roadways. The developer will be responsible for all required improvements.

- 4) Compatibility with Existing and Proposed Development in the Area - Most proximate land uses in the area are as follows: to the north, a mixture of heavy industrial land uses, to the east-northeast, a mixture of heavy industrial and convenience retail uses, and to the south and west, light industrial and commercial land uses. The property is bounded to the north and east by a waste paper recycling facility, several concrete-construction materials processing plants, a moving and storage company, warehousing operations, and a strip retail center containing convenience retail, businesses. Neighboring land uses to the south and west include an automobile filling station, a service industrial and warehousing complex, and a few convenience retail uses. The proposed I-1, Service Industrial, zoning allows similar uses compatible with existing land uses, and is appropriate for a small site located at a heavily traveled intersection.
- 5) Recommendation of the Planning Commission - On December 1, 2004, the Planning Commission reviewed the application and voted unanimously to approve the application as submitted.
- 6) Relationship of the Proposed Map Amendment to the Adopted Plan – The I-1 zoning is consistent with the City's Master Plan adopted on November 12, 2002, which designates the subject site for service industrial land usage. The I-1 zoning is also supported by the City and Montgomery County's 1999 *Gude Drive – Southlawn Lane Special Study*, which indicated that small parcels of land such as



the subject property may be appropriate for the City's I-1 zoning once annexed into the City; and

WHEREAS, the Mayor and Council further finds that I-1, Service Industrial, Zoning is the correct classification for the Subject Property since the parcel clearly relates to the surrounding industrial and commercial neighborhood. It is located amidst a variety of industrial and commercial areas, and the continuation of this pattern of development is appropriate. The zoning is consistent with the established neighborhood as reflected in the Comprehensive Map Amendment adopted by the Mayor and Council on August 4, 2003; and

WHEREAS, the foregoing findings warrant, permit, and compel (a) the confirmation of the I-1 Zoning placed on the Subject Property by Comprehensive Map Amendment Application No. MAP2003-00087, and, should that zoning be found not to be effective, (b) the reclassification of the Subject Property from the County's I-2, Heavy Industrial, Zone to the City's I-1, Service Industrial, Zone; and

WHEREAS, the Mayor and Council further find that the health, safety and general welfare of the City of Rockville would be served by granting the requested application.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND, that based upon the findings set forth above, the Mayor and Council of Rockville concludes that, should it be determined that Ordinance No. 23-03 adopting Comprehensive Map Amendment Application No. MAP2003-00087 did not effectively remove the Subject Property from Montgomery County's I-2 Zone and place the property in the City's I-1 Zone, there was a mistake in the existing Montgomery County I-2 Zone, and that further there has been a substantial change in the Subject Property and the character of the neighborhood

Ordinance No \_\_\_\_\_

- 7 -

where the Subject Property is located, all warranting the reclassification of the Subject Property from the Montgomery County I-2 Zone, to the City's I-1 Zone, and that therefore, Map Amendment Application MAP2004-00092, be, and the same is hereby, granted.

\*\*\*\*\*

I hereby certify that the foregoing is a true and correct copy of an ordinance adopted by the Mayor and Council at its meeting of

\_\_\_\_\_  
Claire F. Funkhouser, CMC, City Clerk



# MAYOR AND COUNCIL AGENDA

NO. 8E

DEPT.: Public Works / Engineering  
STAFF CONTACT: John Scabis

DATE: February 7, 2005

## SUBJECT:

Authorization for the City Manager to execute documents, in a form satisfactory to the City Attorney, to abandon an existing storm drain easement for Fallsgrove Corporate Center that is no longer needed due to planned development of this property.

## RECOMMENDATION:

Move approval of the execution of an abandonment of the storm drain easement for the Fallsgrove Corporate Center.

**IMPACT:** ☒ Environmental ☐ Fiscal ☐ Neighborhood ☐ Other:

**Fiscal Impact:** ☐ Within budget ☐ Over budget:

**Fund:** ☐ General ☐ Capital Projects ☐ Parking ☐ Water ☐ Sewer ☐ Refuse  
☐ SWM ☐ Debt Service ☐ Other:

## DISCUSSION/HISTORY/BACKGROUND:

There is an existing storm drain easement on the proposed Fallsgrove Corporate center lot that is no longer required. The existing easement was granted to the City in association with the construction of Research Boulevard.

Currently, storm flows from this undeveloped property are collected in a storm drain system within this easement. The flows are then conveyed into the public storm drain system located in Research Boulevard.

The proposed Fallsgrove Corporate Center development is proposing a bio-retention stormwater management facility and private storm drain system in the area of this easement. These facilities will still connect to the public system within Research Boulevard, but will be privately constructed, owned, and maintained. Therefore, the storm drain easement is no longer required.

---

**Options Considered (*pros and cons*):**

Not applicable.

**Boards and Commissions Review:**

Not applicable.

**Change in Law or Policy:**

Not applicable.

**Next Steps:**

Upon Mayor and Council approval, F. G. Office Group, L.L.C., will prepare the necessary legal documents. Public Works staff and the City Attorney will review and approve the legal documents. Once approved by City staff, the developer will record the documents in the Office of Land Records of Montgomery County. Public Works permits for this site will not be issued until the abandonment documents are recorded.

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**PREPARED BY:** John Scabis

John Scabis, P.E., Civil Engineer II

1/21/2005

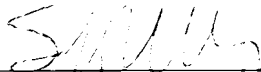
Date

**APPROVE:**

Eugene H. Cranor, Director of Public Works

1/25/05

Date

**APPROVE:**

Scott Ullery, City Manager

1/25/05

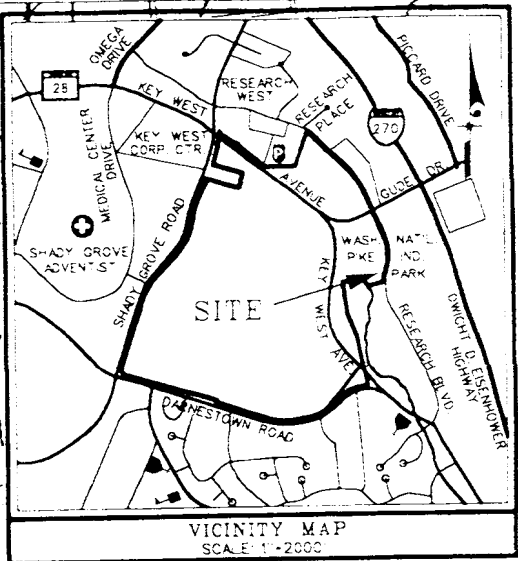
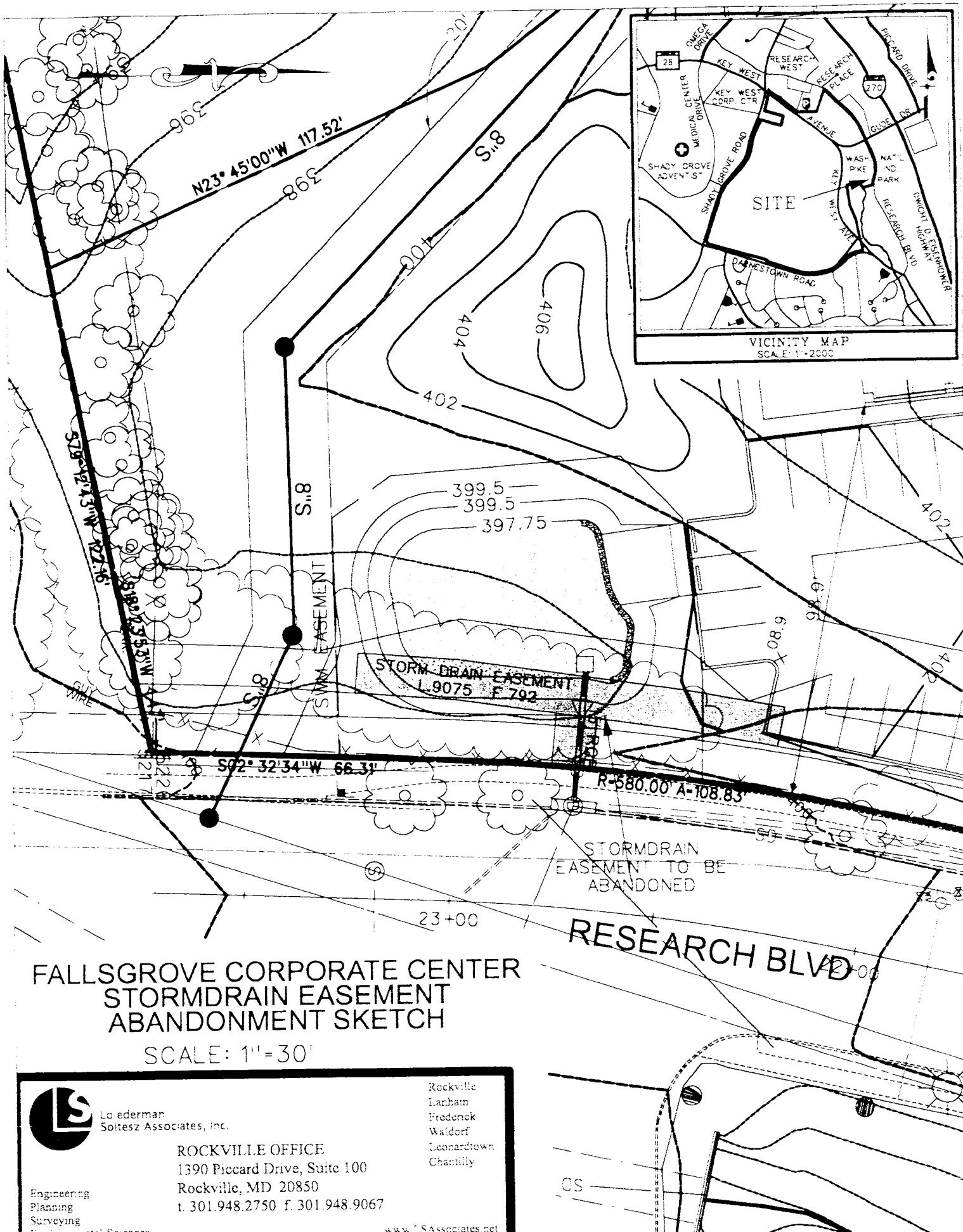
Date

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**LIST OF ATTACHMENTS:**


Sketch detailing the location of the storm drain easement.

---



# FALLSGROVE CORPORATE CENTER STORMDRAIN EASEMENT ABANDONMENT SKETCH

SCALE: 1"=30'



**Loederman  
Soitesz Associates, Inc.**

**ROCKVILLE OFFICE**  
1390 Piccard Drive, Suite 100  
Rockville, MD 20850  
t. 301.948.2750 f. 301.948.9067

Engineering  
Planning  
Surveying  
Environmental Sciences

Rockville  
Lanham  
Frederick  
Waldorf  
Leonardtown  
Chantilly

[www.LSAAssociates.net](http://www.LSAAssociates.net)